

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROY L. DENNEY and U.S. POSTAL SERVICE,  
POST OFFICE, San Jose, Calif.

*Docket No. 98-45; Submitted on the Record;  
Issued June 15, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits.

The Board has duly reviewed the case on appeal and finds that the Office met its burden of proof to terminate appellant's compensation benefits.

Appellant filed claims on August 3, 1994 alleging that he developed bilateral wrist and foot pain due to factors of his federal employment. The Office accepted appellant's claim for bilateral wrist strain and bilateral plantar fasciitis on May 22, 1995. By decision dated August 19, 1996, the Office found that the position of modified clerk represented appellant's wage-earning capacity and that he had no loss of wage-earning capacity.<sup>1</sup> By decision dated July 23, 1997, the Office terminated appellant's compensation and medical benefits finding that he no longer had disability or medical residuals causally related to his accepted employment injuries.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.<sup>2</sup> After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>3</sup> Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>4</sup> To

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<sup>1</sup> As this decision was issued more than one year prior to the date of appellant's appeal to the Board on September 17, 1997, the Board may not review this decision on appeal. 20 C.F.R. § 501.3(d)(2).

<sup>2</sup> *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

<sup>3</sup> *Id.*

<sup>4</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990).

terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.<sup>5</sup>

In this case, the Office referred appellant for a second opinion evaluation with Dr. Charles R. Miller, a Board-certified orthopedic surgeon. Dr. Miller reviewed appellant's history of injury, provided results of his physical examination and responded to questions posed by the Office. In his April 27, 1997 report, Dr. Miller stated that appellant had a history of chronic bilateral wrist and foot pain which was not corroborated by objective findings. He concluded that appellant did not require further medical treatment and that appellant could perform the usual and regular duties of his date-of-injury position without restrictions or limitations.

Appellant responded to the Office's proposal to terminate his compensation benefits by submitting narrative statements and additional medical evidence. In a report dated July 7, 1997, Dr. J. Fucinitti stated that appellant's condition was basically stable. He noted that appellant's foot examination demonstrated no symptoms and that appellant continued to note bilateral wrist pain.

The Board finds that the April 27, 1997 report of Dr. Miller constitutes the weight of the medical evidence and establishes that appellant is no longer disabled and no longer has medical residuals of his accepted conditions. Dr. Miller provided a detailed report based on a proper factual background and including findings on physical examination upon which he based his conclusion that appellant was no longer disabled. The form reports from Dr. Fucinitti do not contain a history of injury and indicate no objective findings on physical examination. As Dr. Fucinitti did not provide any objective findings or medical rationale in support of his opinion that appellant continued to experience residuals and disability causally related to his accepted employment conditions, his reports are not sufficient to create a conflict with Dr. Miller's detailed and rationalized report.<sup>6</sup>

As the weight of the medical evidence establishes that appellant has neither medical residuals nor disability due to his accepted employment conditions, the Office met its burden of proof to terminate appellant's compensation and medical benefits.

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<sup>5</sup> *Id.*

<sup>6</sup> Following the Office's July 23, 1997 decision, appellant submitted additional new evidence to the Office. As the Office did not consider this evidence in reaching a final decision, the Board may not consider it for the first time on appeal. 20 C.F.R. § 501.2(c).

The decision of the Office of Workers' Compensation Programs dated July 23, 1997 is hereby affirmed.

Dated, Washington, D.C.  
June 15, 1999

George E. Rivers  
Member

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member